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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Robert Johnson, an individual,  
  
Plaintiff,  
  
vs.  
  
City of Mesa, *et al.*,  
  
Defendants.

No. 2:19-cv-02827-JAT-JZB

**PLAINTIFF'S SEPARATE STATEMENT  
OF FACTS IN SUPPORT OF MOTION  
FOR PARTIAL SUMMARY JUDGMENT  
RE: THE OFFICER DEFENDANTS'  
AFFIRMATIVE DEFENSES**

Plaintiff Robert Johnson submits the following separate statement of facts in support of his motion for partial summary judgment re: the Officer Defendants' affirmative defenses.

**PLAINTIFF'S SEPARATE STATEMENT OF FACTS**

1. On May 23, 2018, Plaintiff Robert Johnson resided at an apartment complex in Mesa, Arizona. At the request of an acquaintance, Erick Reyes, Robert accompanied Mr. Reyes while Mr. Reyes retrieved his personal property from his ex-girlfriend Kimberly Luevano's apartment. *See Doc. 41*, First Amended Complaint (FAC), p. 3.

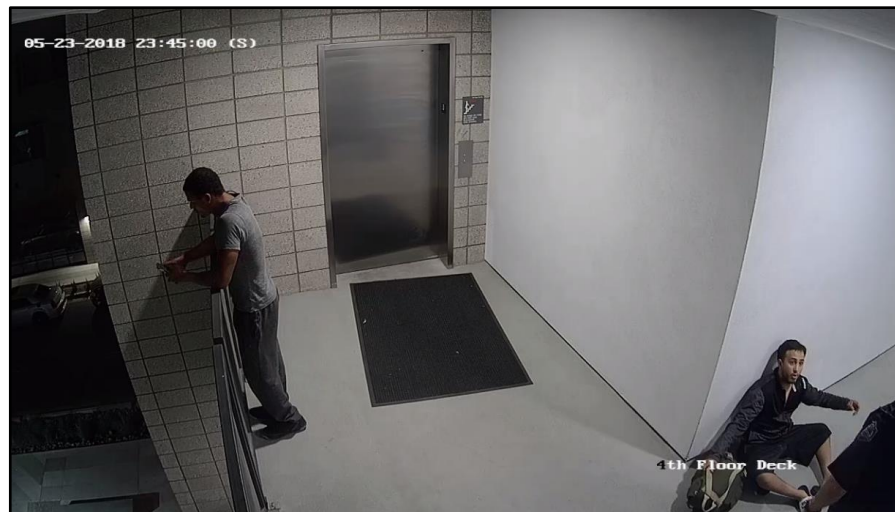
2. Mesa police officers were dispatched to the apartment after Ms. Luevano's boyfriend called 911. The dispatcher informed the officers that Mr. Reyes was reported to be verbal and physical, said that he was lucky he "did not have his strap (gun)," and had a key to the apartment. *See CAD History*, p. 1, *Ex. 1*. The dispatcher also stated that Mr. Reyes had tried to force himself into the apartment and was kicking the door. *Id.* at p. 2.

3. The dispatcher also told the officers that a black male friend was with Mr. Reyes and that the two were on the third floor near the elevator. *See* CAD History, p. 3, **Ex. 1**. The dispatcher provided no other descriptive information about the friend and did not claim that the friend had been involved in the domestic dispute between Mr. Reyes and his ex-girlfriend, or that the friend was suspected of any crime. *See id.*

4. Plaintiff and Mr. Reyes were in the process of leaving the apartment complex, and as they approached an elevator, a Mesa police officer, Defendant Ernesto Calderon, exited it. Security Video, **Ex. 2**; Calderon Axon Video, **Ex. 3**.

5. Defendant Calderon asked Plaintiff not to leave and instructed Mr. Reyes to take a seat on the ground. *See* Calderon Axon Video, **Ex. 3**.

6. Plaintiff complied with Defendant Calderon's request and began using his cellphone while standing near the balcony. *See* Security Video, **Ex. 2**.



7. Defendant Calderon began speaking with Mr. Reyes, who was seated on the ground around the corner from the elevator. Security Video, **Ex. 2**.

8. Plaintiff explained to Defendant Calderon that Mr. Reyes "just needed his backpack" and that he had accompanied Mr. Reyes to get the backpack. *See* Calderon Axon Video, **Ex. 3**.

9. Defendant Calderon responded that was not what he was told, and that "other people" were coming. *See* Calderon Axon Video, **Ex. 3**.

10. Plaintiff continued to use his cellphone while standing against the balcony railing and appeared to be having a conversation with someone on the line. *See* Calderon Axon Video, *Ex. 3*.

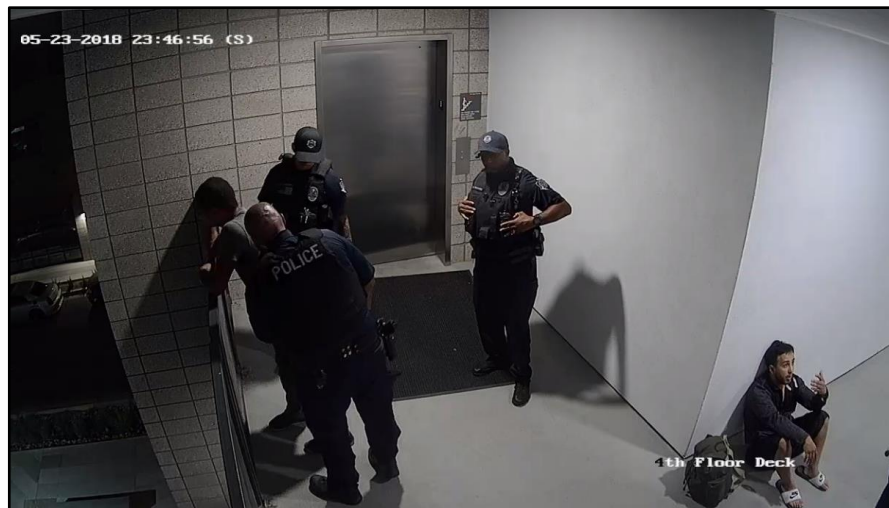
11. Moments later, several other Mesa police officers exited the elevator. *See* Calderon Axon Video, *Ex. 3*.

12. While Plaintiff was still using his phone, Defendant Officer Jhonte Jones asked to search him for weapons. Security Video, *Ex. 2*; Calderon Axon Video, *Ex. 3*.

13. Plaintiff consented to the search, offered no resistance, and did not hinder the search in any way as Jones patted him down. *See* Security Video, *Ex. 2*; Calderon Axon Video, *Ex. 3*; Jones depo. at 47:8-21, 49:25-50:4, 53:5-19, *Ex. 4*.

14. During the search, Plaintiff told Defendant Jones he might have a knife in his pocket and Jones checked. This was not correct, as Plaintiff did not, in fact, have a knife or any other weapons. Jones depo. at 53:5-19, *Ex. 4*.

15. Plaintiff continued trying to use his phone while Defendant Jones searched Plaintiff to his satisfaction. *See* Security Video, *Ex. 2*; Jones depo. at 53:5-19, *Ex. 4*.

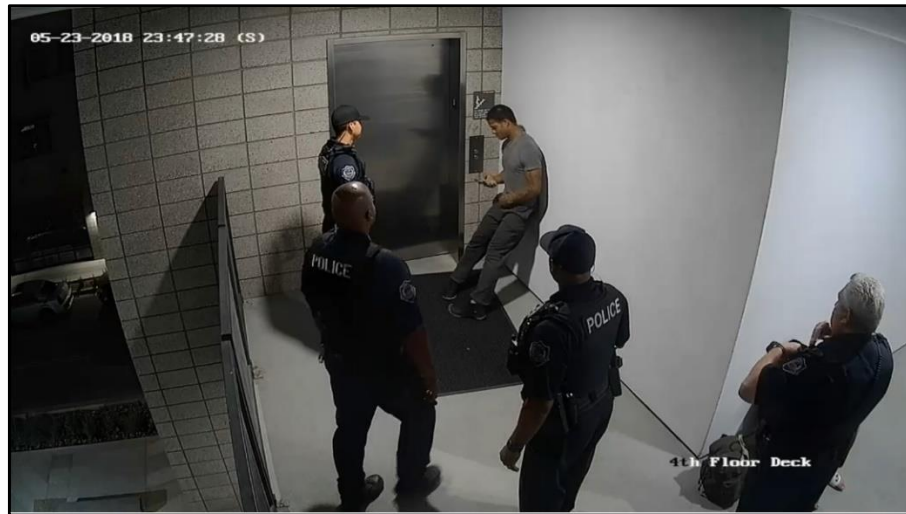


16. When Defendant Jones finished his search, he asked Plaintiff to move to the wall across from the balcony. *See* Security Video, *Ex. 2*; Calderon Axon Video, *Ex. 3*.

17. Again, Plaintiff complied and continued to try to use his cellphone. *See* Security Video, *Ex. 2*.

18. An officer asked Plaintiff to “have a seat” against the wall. *See* Security Video, *Ex. 2*; Calderon Axon Video at 2:50, *Ex. 3*.

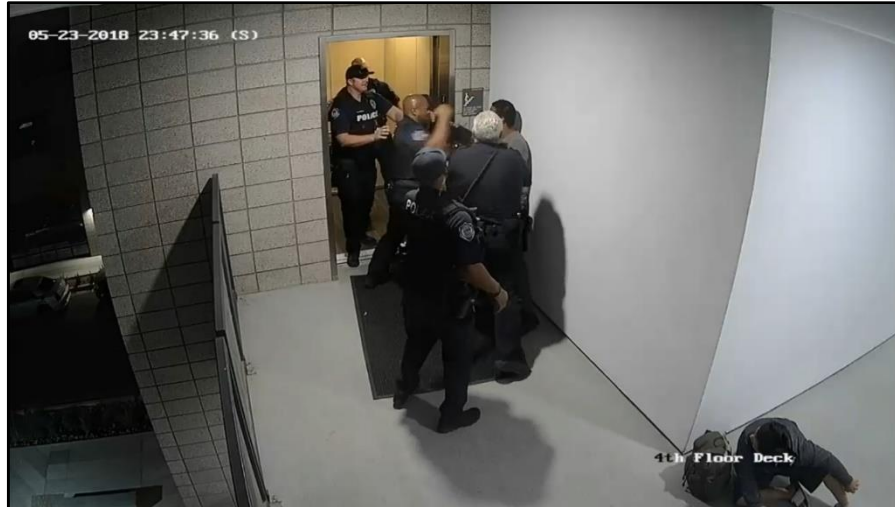
19. As Plaintiff leaned back and began to lower himself against the wall, multiple Mesa police officers, including Defendants Jones, Monarrez, and Calderon (“the Officer Defendants”), rapidly approached him from all sides. *See* Security Video, *Ex. 2*; Calderon Axon Video, *Ex. 3*; Monarrez Axon Video, *Ex. 5*.



20. As the four closed in on Plaintiff, Defendant Jones screamed, “I ain’t gonna ask you again,” then “all the way down, all the way down,” as he rushed toward Plaintiff. *See* Calderon Axon Video at 3:03, *Ex. 3*.

21. The Officer Defendants did not give Plaintiff time to comply with that command. Instead, they violently attacked Plaintiff, striking him repeatedly. *See* Security Video, *Ex. 2*; Calderon Axon Video at 3:09, *Ex. 3*.

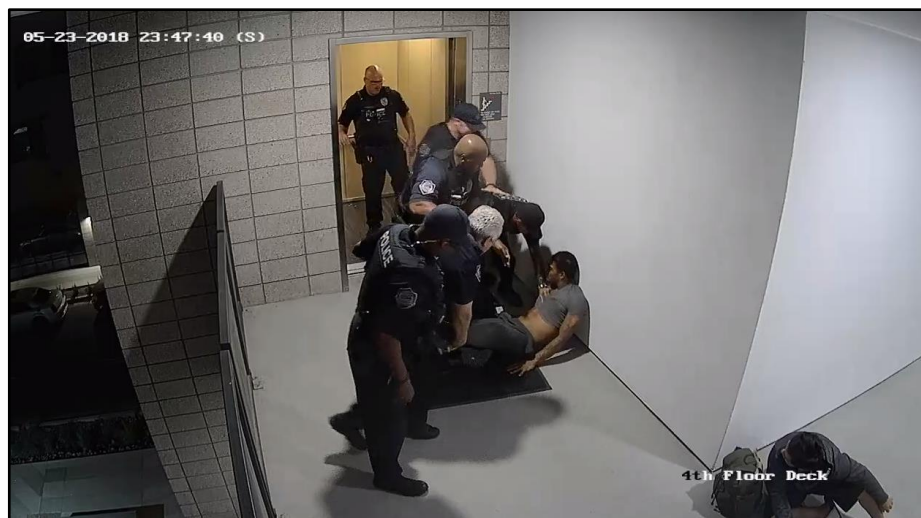
22. Defendant Jones grabbed Plaintiff’s throat, performed at least one knee strike to Plaintiff’s abdomen, and struck Plaintiff numerous times in the face and head. *See* Security Video, *Ex. 2*; Calderon Axon Video at 3:09, *Ex. 3*; Monarrez Axon Video, *Ex. 5*.



23. Defendants Calderon and Monarrez also punched Plaintiff. Security Video, *Ex. 2*; Calderon Axon Video at 3:13, *Ex. 3*; Monarrez Axon Video at 0:26, *Ex. 5*.

24. As they beat him, an officer yelled, “sit your ass down motherf\*\*\*er . . . see what happens, see what happens!” Calderon Axon Video at 3:13, *Ex. 3*.

25. As Plaintiff slid down the wall, his hands limp at his sides, Defendant Jones delivered a final elbow strike to his face while Defendant Calderon pulled Plaintiff’s legs out from under him. Plaintiff said nothing and did not move for several seconds once his body was on the ground. Security Video at 23:47:38, *Ex. 2*.



26. At the time of the beating, Plaintiff was not under arrest, and the Officer Defendants had no reason to believe he had committed any crime.

1 Q. . . . I asked whether or not at the time that he was beaten, he  
2 was not under arrest, correct?

3 [objections omitted]

4 THE WITNESS: At the time of the appropriate use of force, no,  
5 he was not under arrest. He was being detained.

6 Q. BY MR. ROBBINS: And there was no probable cause to  
7 believe that he had committed a crime, correct?

8 [objections omitted]

9 THE WITNESS: We were working on that. The investigation  
10 was still processing.

11 Q. BY MR. ROBBINS: So at the time of the beating, there was  
12 not probable cause to believe that he would be arrested, correct?

13 [objection omitted]

14 THE WITNESS: At the time of the use of force, we didn't have  
15 probable cause to arrest him, but we had a right to detain him.

16 Calderon depo. at 207:1-23, **Ex. 6**; *see also* Jones depo. at 61:3-62:11, **Ex. 4**.

17 27. Plaintiff was not violent, combative, or aggressive. *See* Security Video, **Ex. 2**;  
18 Calderon Axon Video, **Ex. 3**; Monarrez Axon Video, **Ex. 5**.

19 28. At his deposition, Defendants' counsel asked Plaintiff if he was under the  
20 influence of alcohol, drugs, or medication at the time of the assault, and Plaintiff testified  
21 under oath that he was not. Johnson depo. at 108:23-109:20, **Ex. 7**. Defendants have not  
22 disclosed any evidence to support their intoxication defense.

23 29. Plaintiff was not trying to escape or flee from the officers. *See* Security Video,  
24 **Ex. 2**; Calderon Axon Video, **Ex. 3**; Monarrez Axon Video, **Ex. 5**.

25 30. Plaintiff had not threatened or attempted to assault any officer. *See* Security  
26 Video, **Ex. 2**; Calderon Axon Video, **Ex. 3**; Monarrez Axon Video, **Ex. 5**; Calderon depo.  
27 at 25:16:25, **Ex. 6**; Monarrez depo. at 28:5-11, **Ex. 8**.

28 31. Plaintiff did not pose a danger to any officer or third person. *See* Security  
Video, **Ex. 2**; Calderon Axon Video, **Ex. 3**; Monarrez Axon Video, **Ex. 5**.

1           32.    When the officers were beating him, he did not even raise his hands to protect  
2 his face from their blows. Security Video, *Ex. 2*; Calderon Axon Video, *Ex. 3*; Monarrez  
3 Axon Video, *Ex. 5*.

4           33.    After the beating, as Plaintiff lay restrained and shackled on the ground, he  
5 was shaken and upset and used expressive and explicit language. *See* Monarrez Axon Video  
6 at 8:00, *Ex. 5*.

7           34.    In response, the officers, including the Officer Defendants, shoved Plaintiff's  
8 face into the elevator door, dropped him back to the ground, and muzzled him with a "spit  
9 mask." *See* Monarrez Axon Video at 8:28, *Ex. 5*.

10          35.    The Officer Defendants then wrongfully arrested Plaintiff and wrongfully  
11 charged him with disorderly conduct and hindering prosecution, both class one  
12 misdemeanors, despite knowing that Plaintiff had committed no crime and there was no  
13 probable cause for his arrest. *See* Mesa Arrest Booking Record, *Ex. 9*.

14          36.    Both charges against Plaintiff were dismissed. *See* State's Motion to Dismiss  
15 Without Prejudice, *Ex. 10*.

16               RESPECTFULLY SUBMITTED: February 4, 2021

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## CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2021, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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